PUBLIC SERVICE

EMPLOYEE RELATIONS BOARD

ANNUAL REPORT
for the

FISCAL YEAR ENDING MARCH 31, 1988

PUBLISHED BY AUTHORITY OF THE
PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

EDMONTON, ALBERTA

89-04927/

To Her Honour
W. Helen Hunley
Lieutenant Governor of the Province of Alberta

May it please your Honour,

On behalf of the Public Service Employee Relations Board, I respectfully submit to you the Annual Report for the period from April 1, 1987, to March 31, 1988, pursuant to the requirements of Section 77 of the Public Service Employee Relations Act, Revised Statutes of Alberta, 1980, Chapter P-33 and amendments thereto.

Respectfully submitted,

David J. Russell
Deputy Premier

To The Honourable David J. Russell
Government House Leader

Sir:

I have the honour to submit to you, on behalf of the Public Service Employee Relations Board, the Annual Report of the Board for the fiscal period April 1, 1987, to March 31, 1988.

Respectfully yours,

Catherine A. Fraser
Chairman

personnel

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

Chairman — Catherine A. Fraser, Q.C.

Alternate Chairman — Thomas W. Wakeling

Members —

Thomas K. Biggs

Jack Dyck

William Kondro

A. Roderick Turpin

Executive Director — John F. Elsinga

Secretary — Gordon P. Procinsky

ANNUAL REPORT
OF THE
PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

FOR FISCAL PERIOD ENDING MARCH 31, 1988

introduction

The Public Service Employee Relations Act, Revised Statutes of Alberta 1980, Chapter P-33 came into force on September 22, 1977, upon proclamation by Order in Council 965/77. It was amended in 1983 and again in 1985.

Section 17 of the statute embraces the right of an employee to be a member of and to participate in the lawful activities of a trade union, and to bargain collectively with an employer through a bargaining agent. The Act prescribes final and binding arbitration for the resolution of collective bargaining disputes and prohibits strike or lockout action. An employer and bargaining agent may at any time in their collective bargaining make joint application for the appointment of a mediator to assist in settling their dispute.

The legislation also requires that every collective agreement contain a procedure for the resolution of differences between the contracting parties as to the interpretation, application, operation or alleged contravention of their collective agreement.

The Public Service Employee Relations Act describes in considerable detail the basis upon which employees are to be included in or excluded from a bargaining unit of employees. In that regard Sections 9 and 21 of the Act confer authority upon the Public Service Employee Relations Board to make final and binding determinations where the bargaining agent and employer are unable to settle the matter of employee status for collective bargaining purposes.

Section 48 of the Act precludes the referral of certain items in dispute between the bargaining parties to arbitration. The Public Service Employee Relations Board has the responsibility and authority under the statute to make such determinations, a function that is an integral part of the Board's activities with respect to each application it receives seeking the establishment of an arbitration board for the resolution of a collective bargaining dispute.

Part 8 of the Act prohibits employees, trade unions and persons acting on their behalf from engaging in certain activities commonly referred to as unfair practices. In this part of the statute, the Public Service Employee Relations Board is given authority to inquire into complaints alleging such unfair practices and to impose remedial action when satisfied upon inquiry as to the substance of the complaint.

overview

While the Board's caseload during the reporting period was not quantitatively dissimilar from previous years, there was nonetheless a marked change in the focus of its activities. Contrary to past experience, much of the Board's efforts throughout the year were devoted to the processing of applications seeking its determinations as to the bargaining unit status of employees. Such applications turn primarily on the provisions of Section 21(1) of the Public Service Employee Relations Act, which contemplates the exclusion of certain categories of persons from collective bargaining units by reason of their duties and responsibilities to an employer.

In the course of considering those applications the Board was also called upon to address a number of collateral matters involving, for example, the procedure by which bargaining unit exclusions are implemented and subsequently dealt with by an employer and bargaining agent. In several instances, these applications required the Board to interpret and apply provisions in the statute not previously examined.

The statistics which reflect the Board's activities for the current year disclose as well a marked increase in the number of applications made to it seeking the appointment of persons to chair adjudication boards. Adjudication tribunals under the Act are established and designed to resolve differences between an employer and bargaining agent as to the interpretation, application or operation of a collective agreement. In response to that increased demand, the Board was successful in its efforts to add to the number of qualified persons available in the province to serve in such a capacity.

The Board was pleased to have a board member vacancy filled this year with the appointment of Mr. William Kondro, of Lloydminster, Alberta. There was no other alteration in the composition of the Board and its administrative staff.

application

The Public Service Employee Relations Act governs collective bargaining and related matters for more than 55,000 public service employees and their employers within the Province of Alberta. The majority of those employees are employed directly by the Crown in right of Alberta in the various departments of the provincial government's administration. They are represented by The Alberta Union of Provincial Employees as their bargaining agent, and function under a common Master collective agreement and twelve subsidiary agreements, structured on occupational groupings.

Other employers and their employees to whom the Public Service Employee Relations Act applies include the following:

Corporations
- Alberta Mortgage and Housing Corporation
- Alberta Oil Sands Technology and Research Authority
- Alberta Opportunity Company
- Hail Crop Insurance Corporation

Commissions
- Alberta Alcoholism and Drug Abuse Commission
- Alberta Petroleum Marketing Commission
- Alberta Racing Commission

Universities (academic staff excluded)
- Athabasca University
- University of Alberta
- University of Calgary
- University of Lethbridge

Colleges (academic staff excluded)
- Alberta College of Art
- Banff Centre
- Fairview College
- Grande Prairie Regional College
- Grant MacEwan Community College
- Keyano College
- Lakeland College
- Lethbridge Community College
- Medicine Hat College
- Mount Royal College
- Olds College
- Red Deer College

Technical Institutes (academic staff excluded)
- Southern Alberta Institute of Technology
- Northern Alberta Institute of Technology
- Westerra Institute of Technology

Hospitals	— Alberta Children's Provincial General Hospital — Foothills Provincial General Hospital — Glenrose Rehabilitation Hospital — Alberta Cancer Board — University Hospitals Board — The Mental Health Hospital Board, Edmonton — The Mental Health Hospital Board, Ponoka
Boards	— Teacher's Retirement Fund Board — Workers' Compensation Board — Alberta Liquor Control Board (selected offices or departments only)
Councils	— Alberta Research Council

administration & personnel

The Public Service Employee Relations Board is established pursuant to Section 3 of the Public Service Employee Relations Act. It consists of a Chairman, Alternate Chairman and four members, all of whom participate in their respective capacities on a part-time basis.

By Order-In-Council 722/87, the Chairman was re-appointed during the reporting period for a term extending to July 1, 1988, while three members were re-appointed for a two year period expiring November 4, 1989. A fourth member, Mr. William Kondro, was appointed by Order-In-Council 796/87 for a term similarly to expire November 4, 1989.

The Board is served by four full-time employees, all located in the Board's Edmonton offices.

During the course of the reporting period, the Board amended a number of its administrative guides, which outline rules of procedure for the conduct of its business and the manner in which it will process matters referred to it. The Board's authority to establish such rules is contained in Section 6 of the Public Service Employee Relations Act.

significant cases

On December 7, 1984, the Alberta Court of Appeal issued its judgment in response to a Reference made to it by the government of the Province of Alberta. In this Reference, the Court was asked for an opinion as to whether certain provisions in the Public Service Employee Relations Act interfered with the freedom of association of employees as dealt with particularly in Section 2 of the Canadian Charter of Rights and Freedoms.

An appeal from that judgment was launched by The Alberta Union of Provincial Employees and heard by the Supreme Court of Canada in the summer of 1985. The case was subsequently adjourned for decision and consolidated with a number of similar actions initiated in other parts of Canada for the purposes of disposition by the Supreme Court of Canada [Ref. re Pub. Service, etc. (Alta.) (1985) 2 W.W.R. 289].

In a lengthy judgment issued on April 9, 1987, the appeal was dismissed, on the basis that the constitutional guarantee of freedom of association enunciated in Section 2(a) of the Charter does not include, in the case of a trade union, a guarantee of the right to bargain collectively and the right to strike. The judgment also reflected a strong dissent and contrary view by Chief Justice Dickson and Justice Wilson. [Index as: Ref. re Public Service Employee Relations Act (Alta.) 3 W.W.R. 577].

judicial review — cases

Decisions of the Public Service Employee Relations Board which were the subject of judicial review during the reporting period include the following:

1. Her Majesty the Queen in right of the Province of Alberta,
   Edmonton, Alberta
   (Applicant)
   and
   The Alberta Union of Provincial Employees,
   Edmonton, Alberta
   (Respondent)
   and
   The Public Service Employee Relations Board,
   Edmonton, Alberta
   (Respondent)

These proceedings commenced with a decision of the Board and Reasons issued on December 31, 1984. By application to the Court of Queen's Bench, the Applicant requested the Court to quash certain of the Board's determinations on the arbitrability of items claimed in dispute. In a judgment issued April 15, 1985, the Court upheld the Board's determinations in respect of all but one matter.

An appeal and cross-appeal from this judgment were heard and dismissed by the Alberta Court of Appeal on September 10, 1987.
(PSERB Ref. 140-001-502)

2. The University of Alberta Hospitals Staff Nurses Association,
   Edmonton, Alberta
   (Applicant)
   and
   The Alberta Cancer Board,
   Edmonton, Alberta
   (Respondent)
   and
   The Public Service Employee Relations Board,
   Edmonton, Alberta
   (Respondent)
   and
   The Alberta Cancer Board Staff Nurses' Association,
   Edmonton, Alberta
   (Respondent)

This was an application to the Court of Queen's Bench of Alberta to quash a decision of the Board issued on August 13, 1986, relating to an application for certification of a bargaining agent. The principal focus of that request for judicial review was a determination by the Public Service Employee Relations Board as to the employee status of certain persons identified as 'Research Nurses'.

The matter was heard on May 19, 1987, and subsequently adjourned *sine die* by leave of the Court, to enable the Applicant to seek reconsideration and variance of the Board's decision. The judicial review proceedings were discontinued in early 1988, following the Board's reconsideration and variance of its August 13, 1986 decision.
(PSERB Ref. 115-039-516)

3. The Board of Governors of Medicine Hat College,
   Medicine Hat, Alberta
   (Applicant - Respondent)
   and
   The Alberta Union of Provincial Employees,
   Edmonton, Alberta
   (Applicant - Respondent)
   and
   The Public Service Employee Relations Board,
   Edmonton, Alberta
   (Respondent)

On March 19, 1987, the Board issued a decision and reasons reflecting its determinations as to the arbitrability of certain items claimed in dispute and arising as a result of an application to the Board to establish an arbitration board to resolve a collective bargaining dispute.

By applications filed on March 30, 1987 and April 8, 1987, the Employer and Union both requested the Court of Queen's Bench to quash certain parts of the decision of the Board. Concurrently, both parties requested the Board to reconsider and vary or correct the affected portion of the March 19, 1987 decision of the Board.

The applications for judicial review were subsequently heard and dismissed by the Court of Queen's Bench in a judgment issued on June 6, 1987.

An appeal from that judgment was taken by The Alberta Union of Provincial Employees to the Court of Appeal of Alberta.
(PSERB Ref. 140-065-502)

4. The Board of Governors of Lethbridge Community College,
   Lethbridge, Alberta
   (Applicant - Respondent)
   and
   The Alberta Union of Provincial Employees,
   Edmonton, Alberta
   (Applicant - Respondent)
   and
   The Public Service Employee Relations Board,
   Edmonton, Alberta
   (Respondent)

On March 20, 1987, the Board issued a decision setting out its determinations as to the arbitrability of a large number of items claimed in dispute by the Union and Employer, as part of the processing of an application for the establishment of an arbitration board. On April 8, 1987 and April 14, 1987 respectively, the Union and Employer each applied to the Court of Queen's Bench for orders quashing certain parts of the Board's decision. In addition, both applied to the Board for reconsideration and variance of affected portions of the Board's decision.

The Court of Queen's Bench in a judgment delivered on June 6, 1987, upheld the Board's determinations on all but one matter, on which it reserved, pending issuance of the Board's reasons. That matter is scheduled for hearing in late 1988.

With respect to the June 6, 1987 judgment of the Court of Queen's Bench, the Union launched an appeal, which is scheduled for hearing by the Alberta Court of Appeal in May of 1988.
(PSERB Ref. 140-063-502 and 105-063-502)

5. The Alberta Union of Provincial Employees,
   Edmonton, Alberta
   (Applicant)
   and
   Her Majesty the Queen in right of the Province of Alberta,
   Edmonton, Alberta
   (Respondent)
   and
   The Public Service Employee Relations Board,
   Edmonton, Alberta
   (Respondent)

In a decision with reasons issued on December 8, 1987, the Board responded to a joint application by the Union and the Employer relating to the interpretation and application of several provisions in the Public Service Employee Relations Act affecting the bargaining unit status of persons employed by the Crown. The Union applied to the Court of Queen's Bench for an order quashing the Board's decision.

This matter is scheduled for hearing in May 1988.
(PSERB Ref. 100-001-502[11])

ANNUAL STATISTICS AND COMPARATIVE DATA

April 1, 1987, to March 31, 1988

Section of Act	Nature of Application		Disposition 1985/86	1986/87	1987/88
9	Determinations	Granted	4	2	1
		Dismissed	1	1	4
		Withdrawn	1	1	0
		Outstanding	0	1	11
11	Reconsideration	Granted	0	4	4
		Outstanding	0	0	0
		Refused	3	3	0
25	Certification	Granted	2	2	0
		Refused	2	1	1
		Withdrawn	0	0	0
		Outstanding	0	1	5
46	Appointment of Mediator	Granted	4	3	1
		Withdrawn	1	0	0
49	Establish Arbitration Board	Granted	4	6	4
		Refused	11	2	1
		Withdrawn	14	3	2
		Outstanding	0	0	5
52	Appointment of Chairman & Member to Arbitration Board	Granted	2	5	4
		Refused	0	0	0
		Withdrawn	0	0	0
64	Appointment of Adjudicator	Granted	7	9	30
		Withdrawn	0	4	0
		Refused	0	0	0
74	Unfair Practice Complaints	Granted	0	1	1
		Dismissed	1	1	0
		Refused/ Withdrawn	1	2	2
74	Failure to Bargain in Good Faith	Granted	0	0	0
		Refused/ Dismissed	0	1	0
		Withdrawn	0	1	3
90	Successor Trade Union / Employer	Granted	0	0	0
		Dismissed/ Withdrawn	1	0	1

Days of Board Hearings	— 1984/85	39 Days
	— 1985/86	24 Days
	— 1986/87	27 Days
	— 1987/88	30 Days
Estimated number of employees affected by Certification	— 1984/85	185
	— 1985/86	329
	— 1986/87	428
	— 1987/88	330
Total applications disposed of	— 1984/85	55
	— 1985/86	36
	— 1986/87	41
	— 1987/88	59
Total applications outstanding	— 1984/85	16
	— 1985/86	0
	— 1986/87	2
	— 1987/88	21

budgetary review

Approved Manpower and Operating Costs

PUBLIC SERVICE EMPLOYEE RELATIONS BOARD

		% Change
1984/85	522,313*	+26.9*
1985/86	393,259	-32.8
1986/87	441,770	+12.6
1987/88	471,730†	+ 6.7†

* Includes $194,000 Special Warrant.
† Includes $106,000 Special Warrant.

in appreciation

The Board takes this opportunity to publicly express its appreciation to the Honourable Neil Crawford, the Honourable David Russell and their Executive Assistants, Mr. John Scrimshaw and Mr. Tom McLaren, respectively, for their assistance and co-operation in facilitating the activities of the Board during the period affected by this report.